

---

## DEPARTMENT OF REVENUE

**Finding:** Department of Revenue, due to a lack of consistent collection policies and procedures and a failure to aggressively pursue delinquent taxpayers, has failed to adequately collect taxes, penalties, and interest owed to the state. As of June 1999, a total of \$308 million in state taxes had not been collected from delinquent taxpayers. The department should take steps to become more aggressive with its current collection mechanisms and develop a consistent policy and procedure regarding collections of delinquent taxes.

**OPTION 1:** Enhance the Department's ability to maximize in-state collections by encouraging new policies and procedures to more effectively utilize existing departmental or state resources and personnel or by expanding the department's authority to use private collection agencies to include in-state uncollectibles.

**Description And Background:** The department has experimented in the past with utilizing existing personnel in special collection efforts. These efforts should be reinstituted, possibly including creation of a collection unit with existing staff to work during evening and weekend hours to enforce collection.

R.S. 47:1516 currently authorizes the Department to enter into contracts with collection agencies for the purpose of debt collection for out-of state taxpayers. The liability of the taxpayer must be in warrant status and the taxpayer's identifiable assets subject to distraint must be insufficient to satisfy the obligations owed. The Department currently assigns out-of-state accounts to collection contractors after all collection efforts have been exhausted. The contractor adds a 25 percent collection fee to the existing balance of tax, interest, penalties, and fees already due the state.

The Department recommends that its authority to assign delinquent accounts to private collection agencies be extended to in-state delinquent accounts. However, since collection agencies do not have the authority to seize assets, these accounts should not be sent to the private agency until after the Department has determined that the taxpayer has insufficient assets to satisfy the amount owed.

**Estimated Fiscal Impact:** According the Department records, the total in-state uncollectible amount is more than \$88 million. The Department hopes that this change will result in greater taxpayer compliance, but cannot estimate what fiscal impact would result.

**OPTION 2:** Amend R.S. 47:1580(C) to interrupt prescription if a taxpayer fails to file any state tax return.

**Description And Background:** Prescription is the period of time in which a person or the state has a right of action to exercise a legal right against another party. The Constitution of Louisiana provides that taxes prescribe three years from December thirty-first in the year in which they are due. After the three-year period has expired, the

Department does not have a right of action to collect taxes from the taxpayer, unless a waiver of prescription is obtained from the taxpayer or there is some statutory authority which gives the Department more time.

Act 957 of the 1997 Regular Session amended R.S. 47:1580(C) to provide that prescription shall be interrupted if the taxpayer fails to file a state income or corporation franchise tax return. The Act also repealed R.S. 47:1580(A)(5), which suspended prescription for the willful non-filing for all taxes. Failure to file for taxes other than income or corporation franchise taxes is subject to the normal three-year prescription. The IRS and most neighboring states do not have a statute of limitation (prescription) when no return is filed. Prescription does not begin to run until the return is filed.

The Department recommends that prescription be interrupted if a taxpayer, for whatever reason, fails to file any state tax return.

**Estimated Fiscal Impact:** The Department hopes that this change will result in greater taxpayer compliance, but cannot estimate what fiscal impact would result.

**Action Required To Implement:** Legislation to amend R.S. 47:1580(C) to interrupt prescription if a taxpayer fails to file any state tax return.

**OPTION 3: Amend R.S. 47:1580(A)(4) to provide more specific language to clarify the meaning of “false or fraudulent” return.**

**Description And Background:** At the present time, R.S. 47:1580(A)(4) is rarely used to interrupt prescription because of the vagueness of the meaning of a “false or fraudulent” return. More specific language to define the meaning of “false or fraudulent” return would make administration of the provision more effective. The Department proposes defining the term to include “the omission of facts, circumstances, or conditions through concealment, camouflage, or subterfuge, which results in the material misstatement or misrepresentation of facts.”

The IRS and most neighboring states interrupt prescription when a “false or fraudulent” return is filed and have more specific definitions or examples of what is a “false or fraudulent” return.

**Estimated Fiscal Impact:** It is expected that the interruption of prescription for filing false or fraudulent returns would enhance voluntary taxpayer compliance, reduce the occurrence of certain offenses, and increase tax revenues. However, the amount of revenue increase cannot be estimated.

**Action Required To Implement:** Legislation to amend R.S. 47:1580 to add specific language to define the meaning of a “false or fraudulent” return.

**OPTION 4:** Amend the crime of issuing worthless checks, R.S. 14:71, to clarify that the term “thing of value” includes taxes and other payments to the Department of Revenue, and expand application to include any worthless check tendered to any state agency.

**Description And Background:** Many District Attorneys are not prosecuting NSF checks written by taxpayers to the Department of Revenue because they are of the opinion that the crime of issuing worthless checks does not include those issued to the Department of Revenue for the payment of taxes. They claim that the remittance of checks for the payment of taxes is not an exchange for a “thing of value” and therefore an important element of the crime has not been met. Clarifying the meaning of this term and expanding application to include not only taxes and other payments to the Department of Revenue, but such payments to all state agencies would facilitate pursuit of action in these cases.

**Estimated Fiscal Impact:** Increasing the prosecution of persons writing NSF checks for taxes can be expected to reduce the occurrence of NSF checks, enhance delinquent tax collections, and increase tax revenues. However, the amount of revenue increase cannot be estimated.

**Action Required To Implement:** Legislation to amend R.S. 14:71, the crime of issuing worthless checks, to define a “thing of value” to include checks tendered to the Department of Revenue and any other state agency in payment of taxes, penalties, interests, and fees.

**OPTION 5:** Apply existing sales tax cease and desist provisions to all taxes collected by a third party on behalf of the state, such as income withholding taxes and certain gasoline taxes.

**Description And Background:** If a retailer fails to remit any sales tax collected from a purchaser, the Department has the authority to institute legal action to cause the retailer to cease from further pursuit of business. While this has assisted the Department in the collection of delinquent sales taxes, it does not apply to enforcement of the collection of other delinquent taxes. This method of enforcement is preferable when the seizure of assets would not benefit the state due to pre-existing liens already filed against the taxpayer.

**Estimated Fiscal Impact:** Cannot be determined at this time. Expansion of the cease and desist provisions would assist in reducing outstanding accounts and promote greater voluntary taxpayer compliance.

**OPTION 6:** Conduct further research to determine the feasibility of requiring applicants for certain permits and licenses and contract bidders on goods and services to state departments and government agencies to obtain state tax clearances.

**Description And Background:** The tax clearance program was initiated to ensure that certain businesses and taxpayers pay their proper taxes. This was in response to the apparent increase in the number of businesses that continue to operate without paying their taxes. There are currently six major programs where the Department issues tax clearances, namely, alcoholic beverage permits, video poker permits, gaming licenses, initial lottery licenses, resident/nonresident contractor program, and boat registration.

The Department of Revenue recommends expansion of the tax clearance program to include businesses under contract to provide goods and services to state departments and agencies and renewals for businesses that have permits from the Louisiana Lottery Commission. The Department also recommends that the program be expanded to include clearance for all state taxes.

It is unclear whether the potential benefits of expanding the tax clearance program would offset the additional administrative burden of implementation or whether the resources are available for successful implementation.

**Estimated Fiscal Impact:** Expanding the tax clearance program may enhance voluntary taxpayer compliance, reduce the occurrence of delinquent filing and payments, and increase tax revenues. However, the amount of revenue increase cannot be estimated.

**Action Required To Implement:** Resolution to require Department of Revenue and Division of Administration to study and report to the Legislature on the feasibility of expanding the program and alternatives for implementation.

**OPTION 7: Expand the Department of Revenue's authority to issue refunds of overpayments.**

**Description And Background:** In November 2000, the Revenue Department drastically changed its policy pertaining to the refunding of overpayments of state tax. The policy change was a reaction to a 19th Judicial District Court case, *Amoco v. Kennedy*, in which the court found that the Department did not have the authority to refund an overpayment under a strict interpretation of the refund statute, R.S. 47:1621. As a consequence of the court decision, the Department conducted an internal review of its refund policy to determine if it was consistent with the refund authority granted by R.S. 47:1621. The result of review was the issuance of Policy and Procedure Memorandum 30.1, issued November 6, 2000, which severely restricted the circumstances under which an overpayment of tax would be refunded.

The Policy and Procedure Memorandum basically outlines the steps which will be taken by Department employees to determine the authority to issue a refund. First, the Department will look outside of the refund statute itself to determine if any other statutory provision gives them the authority to grant the refund, such as the statute authorizing refunding of overpayments of withholding taxes. If there is no outside authority, then the Department will look to the specific provisions of the refund statute for authority to issue a refund. The refund will be issued when:

- The overpayment was due to an error on the part of the taxpayer in mathematical computation.
- The tax was overpaid because of a construction of law on the part of the taxpayer contrary to the secretary's construction of the law at the time of the payment.
- The overpayment results from a change made by the secretary in an assessment.
- An income tax overpayment occurs because of a change in federal income tax data which formed a basis for calculation of the Louisiana income tax.
- An income tax overpayment results from an overpayment of estimated Louisiana income tax.
- An income tax overpayment results from application of a Louisiana net operating loss carryback.

There has been much discussion of this topic since the Department issued the memorandum. As a result, the Department, on January 2, 2001, issued an emergency rule dealing with refunding of erroneous or duplicate payments. The rule, issued under authority of R.S. 47:1519, allows the Department to issue a refund to persons remitting erroneous or duplicate payments, whether such payments are made by cash, personal check, money order, electronic funds transfer, or other form of payment.

**Estimated Fiscal Impact:** Cannot be determined.

**Action Required To Implement:** Legislation to expand the Department of Revenue's authority to issue refunds of overpayments. This item is included in the call for the 1st Extraordinary Session of 2001 and legislation has been introduced.

**OPTION 8: Authorize the Department of Revenue to publish the names of delinquent taxpayers once their tax liabilities have become collectible by distraint and sale.**

**Description And Background:** Currently, the department publishes the names of delinquent taxpayers for which a tax lien has been filed with the recorder of mortgages in accordance with C.C. Art. 3320 et. seq. The publication of tax information from public records does not constitute a violation of R.S. 47:1508 confidentiality provisions for taxpayer information. Amendment of R.S. 47:1508 to allow publication of delinquent taxpayer names when their tax liabilities have become collectible by distraint and sale, without the requirement of filing of a lien, would enhance the department's ability to collect delinquent taxes.

**Estimated Fiscal Impact:** This change may result in greater taxpayer compliance, but the actual fiscal impact cannot be determined.

**Action Required To Implement:** Amendment of R.S. 47:1508 to provide this authority